
IN THE SUPREME COURT OF IOWA

16-1794

**IN RE THE MARRIAGE OF LYNN MARIE LARSEN and ROGER
WAYNE LARSEN**

**Upon the Petition of,
LYNN MARIE LARSEN,
Petitioner-Appellee,**

And concerning,

**ROGER WAYNE LARSEN,
Respondent-Appellant.**

**APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR STORY COUNTY
HONORABLE MICHAEL J. MOON, JUDGE**

**RESPONDENT-APPELLANT'S APPLICATION FOR FURTHER REVIEW
COURT OF APPEALS DECISION FILED JULY 6, 2017**

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QUESTION PRESENTED FOR REVIEW

Pursuant to prior holdings by this Court in *In re Marriage of Vannausdle* and *In re Marriage of Goodman*, did the Appellate Court err in its calculations regarding the cost of attendance for post-secondary education and in not assessing available scholarships, student loans, and cost to the child?

CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of July, 2017, I did serve two copies of the Application for Further Review within on the parties listed below, by mailing a copy thereof to the following:

Roger Larsen
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I further certify that on July 25, 2017, I will file this document by submitting the Appellant's Application for Further Review via electronic filing with the Clerk of the Supreme Court. Participants in the case who are registered with the EDMS will be served by EDMS.

/s/Erin M. Carr
Erin M. Carr

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STATEMENT SUPPORTING FURTHER REVIEW

This Court has previously held that the reasonable costs of attending college include more than just tuition, books, room, board, and supplies. *In re Marriage of Vannausdle*, 668 N.W.2d 885, 889 (Iowa 2003). However, as it relates to sorority dues, it has been held that those will be considered only in unique circumstances like the one presented in *In re Marriage of Goodman* where the parties initially agreed to split those sorority due costs. 690 N.W.2d 279, 284 (Iowa 2004). The Iowa Court of Appeals unreasonably expanded the holding in *Goodman* to this case and in doing so rendered an opinion on an important matter that is in direct conflict with the *Goodman* holding. *Id.*

After the cost component is determined, the court must determine the amount the child can reasonably contribute to the payment of costs given the child's financial resources. *Vannausdle*, 668 N.W.2d at 888 (see also Iowa Code § 598.21F(2)(b)). In calculating the child's contribution, the Court should consider "the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school." Iowa Code §598F.21(2)(b). The child's expected contribution is then subtracted from the cost calculation to determine the parent's obligation. *Vannausdle*, 668 N.W.2d at 888 (see also Iowa Code § 598.21F(2)(c). Only in the narrow facts of *Vannausdle*

should the child's contributions, student loans, and scholarships not be applied under this calculation. The Iowa Court of Appeals unreasonably expanded the holding in *Vannausdle* to this case and in doing so rendered an opinion on an important matter that is in direct conflict with the *Vannausdle* holding. 668 N.W.2d 888. Further review should be granted pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b)(1).

BRIEF IN SUPPORT OF REQUEST FOR FURTHER REVIEW

Course of Proceedings: This matter was initiated by the Petitioner-Appellee, Lynn Larsen (hereinafter “Petitioner”), by the filing of and Application for Hearing to Determine Post-Secondary Education Subsidy on August 2, 2016. (Application) (App. pp. 18-20). The matter proceeded to hearing on August 22, 2016. (Order) (App. pp. 37-79). On September 13, 2016, the district court issued a ruling in this matter assessing post-secondary education expenses to the parties. (Order) (App. pp. 104-107). Following the ruling, both parties filed Motions to Amend, enlarge, and modify the Order. (Motion to Enlarge – Petitioner) (Motion to Enlarge – Respondent) (App. pp. 108-114). On September 26, 2016, a hearing was held on the Motions. (Motion Tr., p. 1, lines 1-25) (App. pp. 115-130). On October 5, 2016, the district court entered an Order assessing post-secondary education expenses to the parties. (Amended Order) (App. pp. 131-135). The district court determined that Respondent-Appellant, Roger Larsen (hereinafter “Respondent”), should pay \$6,629.73 towards the post-secondary education expenses of the child at issue. (Amended Order) (App. pp. 131-135).

Respondent filed a Notice of Appeal on October 19, 2016, as to the Order assessing post-secondary education expenses and all adverse rulings contained therein. (Notice of Appeal) (App. pp. 136-137). On July 6, 2017, the appellate

court affirmed the ruling of the district court. (Court of Appeals Ruling) (Attachment).

Facts: The necessary factual history can be found in *In re the Marriage of Lynn Marie Larsen and Roger Wayne Larsen*, No. 16-1794, 2017 WL 2875945 (Iowa Ct App. July 6, 2017).

The appellate court made numerous errors in its calculation and assessment of post-secondary education costs pursuant to Iowa Code § 598F. For the following reasons, this Court should overturn the ruling of the appellate court and grant Respondent relief as requested.

ARGUMENT

I. THE APPELLATE COURT ERRED IN ITS CALCULATION OF THE COST OF ATTENDANCE

a. The Appellate Court Incorrectly Calculated the Actual Costs

Respondent offered Exhibits A and B for the appellate court's consideration in this matter. (Exhibits A and B) (App. pp. 21-24). By Petitioner's own admission, the costs of attendance outlined in Exhibit A, the Ubill, were actually lower than the estimated cost of attendance outlined by Exhibit B. (Hearing Tr., p. 16, line 7 – p. 20, line 10) (Exhibits A and B) (App. pp. 21-24; 52-56). As a result, Respondent compiled Exhibit H and urged the appellate court calculate the costs of attendance pursuant to Exhibit A as he had in section one of his chart. (Hearing Tr., p. 23, line 25 – p. 25, line 2) (Exhibits A and H) (App. pp. 21-22; 36; 59-61). His chart also

included the actual book costs as well which he derived from H.L.'s Iowa State University Book Store receipt as opposed to the estimate contained in Exhibit B. (Hearing Tr., p. 25, lines 3-13) (Exhibits B, F and H) (App. pp. 23-24; 34-35; 61). The difference between these numbers can be found by comparing the district court's amended Order with Respondent's Exhibit H. (Amended Order) (Exhibit H) (App. pp. 36; 131-135). The Amended Order largely adopted Respondent's request that it apply the actual costs vs. the estimated costs. (Amended Order) (App. pp. 131-135). However, the appellate court still appears to miscalculate the fees portion by double counting some fees that were listed as one-time fees in Exhibit A. (Amended Order) (Exhibit A) (App. pp. 21-22; 131-135). The result is an estimated cost in the Amended Order, minus the sorority dues and cash allowance, of \$17,369.20 versus \$16,694.40 for section one of Exhibit H. (Amended Order) (Exhibit H) (App. pp. 36; 131-135). As Exhibit H correctly outlines each individual fee and is correctly calculated, Respondent requests this Court amend the district court's Order to reflect the appropriate cost of attendance at \$16,694.40.

b. The Appellate Court Incorrectly Included Sorority Dues and a Cash Allowance.

As noted above, *In re Goodman* stands for the notion that sorority dues and cash allowances will only be allowed in cases that fit the unique circumstances of *Goodman*. 690 N.W.2d at 284. In *Goodman*, the parties had *previously agreed* to

give their child a cash allowance prior to their divorce decree being entered [emphasis added]. *Id.* Additionally, they had *previously agreed* to split the costs of sorority dues when she attended college and indicated that participation in sorority life, in their view, was necessary for her college experience [emphasis added]. *Id.* There are no such agreements in this case, which the appellate court failed to realize. Respondent was adamant throughout that he disagreed with paying the costs of sorority membership and he was firm that he did not agree to pay H.L. an allowance. Furthermore, no evidence or testimony was ever admitted indicating H.L. had an allowance similar to the Goodman child prior to the entry of the dissolution decree in this matter. In short, the appellate court unreasonably expanded the holding in *Goodman* and, as a result, misapplied the holding to this case. This case is distinguishable from the narrow and specific facts considered in *Goodman* and therefore the appellate court's inclusion of sorority dues and cash allowance in the total cost of attendance calculation was in error. Those amounts should be subtracted from the total and this Court should amend the district court's Order to find that the total cost of attendance for H.L. at Iowa State University is \$16,694.40.

II. THE APPELLATE COURT ERRORED IN NOT ASSESSING COST TO THE CHILD

a. The District Court Failed to Include the Child's Student Loan

The court must determine the amount a child can reasonably contribute to their own education, whether in the form of scholarships, loans, or grants. *Vannausdle*, 668 N.W.2d at 888 (see also Iowa Code § 598.21F(2)(b)). The Court in *In re Vannausdle* did not include student loans in the calculation of the child's contribution. 668 N.W.2d at 889-890. However, the court clearly states that this was due to the fact that neither party asked for it to be considered in the calculation at the district court level. *Id.* Because neither party asked, it was clear to the Court that neither party intended for loans to be considered. *Id.* With an agreement from the parties, there is no need for the court to interject itself. *Id.* That is very different than the facts of this case and clearly distinguishable. In this case, Respondent specifically requested it be considered in the calculation. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits A, C, and H) (App. pp. 61-64; 21-23; 36). He included documentation of its availability and amount, included it in his calculation chart, and testified that he wanted it to be considered. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36; 61-64). The total amount of student loan available to H.L. was \$5,500.00 in unsubsidized federal loans. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36; 61-64). Pursuant to Iowa Code § 598.21F(2)(b), this amount should have been applied to the total before any assessment was made of the parents portion of payment. *In re Vannausdle*, 668 N.W.2d at 888; Iowa Code §

598.21F(2)(c). The appellate court failed to do this and instead unreasonably expanded the narrow, case-specific holding in *Vannausdle*. Respondent requests this Court amend the appellate court's Order to subtract the \$5,500.00 loan amount from the total cost of attendance.

b. The District Court Failed to Include the Child's Scholarships

The child received a Dollars for Scholars scholarship in the amount of \$525.00 annually and an unidentified scholarship in the amount of \$500.00 annually. (See Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36). These amounts were not calculated by the appellate court as contributions from the child as required by Iowa Code §598.21F(2)(b). This failure was in error and should have been applied before determining the parent's contribution amounts. *Vannausdle*, 668 N.W.2d at 888; Iowa Code § 598.21F(2)(c). Respondent requests this Court amend the appellate court's Order to subtract the \$1,025.00 in scholarship money H.L. received on her Ubill from the total cost of attendance. (See Exhibits A, B, and H).

c. The District Court Failed to Include the Child's Ability to Earn Wage and Other Financial Resources

Iowa Code § 598.21F(2)(b) includes in its calculation of the child's contribution the child's financial resources including the child's ability to earn income while attending school. Respondent requested the appellate court apply and consider H.L.'s cash on hand and her reasonable ability to work while enrolled in

school in its calculation. (Hearing Tr., p. 28, line 4 – p. 30, line 16) (Exhibit H) (App. p.p. 36; 64-66). He noted that H.L.'s bank account showed a balance of \$2,119.11 at the time of the hearing and that he had paid an additional \$750.00 past her date of graduation in the amount of child support to help aid and assist in her finances. (Hearing Tr., p. 28, line 4 – p. 30, line 16) (Exhibits D and H) (App. pp. 30; 36; 64-66). He also noted that she could work a reasonable 10 hours a week while attending school and full time in the summer at a rate of \$10.00 per hour. (Hearing Tr., p. 28, line 4 – p. 30, line 16) (Exhibit H) (App. pp. 36; 64-66). He requested the appellate court add these amounts to the child's expected contribution amount pursuant to Iowa Code § 598.21F(2)(b). This request was not unreasonable given that, pursuant to the calculations in Exhibit H which show surplus revenue of \$3,699.71 for the academic year, H.L. would end the school year with more money in her bank account than when she started. (Exhibit H) (App. p. 36). The appellate court failed to grant Respondent's request and held that the child bore no responsibility for payment for her education of any kind. (Court of Appeals Ruling) (Attachment). This was contrary to Respondent's repeated desire for his daughter to have some personal financial responsibility for payment of her own education. (Hearing Tr., p. 31, line 13 – p. 33, line 7 and p. 34, lines 11-20) (App. pp. 67; 70). The failure of the appellate court to apportion the child any financial responsibility was in error and contrary to the narrow holding of

Vannausdle, 668 N.W.2d at 888. This Court should amend the appellate court's Order and require the child to bear some financial responsibility for her education as requested by the Respondent.

III. TOTAL CALCULATION OF SUBSIDY

With application of the above stated amendments, this Court should find as follows:

Total cost of Attendance	\$16,694.40
Grants and Scholarships	-\$6,025.00
Loans	-\$5,500.00
Student Financial Resources	-\$2,869.11
Earned Income – Student	-\$6,000.00
TOTAL BALANCE	-\$3,699.71
PARENTAL CONTRIBUTION	\$0

CONCLUSION

For the reasons stated above, this Court should modify the appellate court Order regarding post-secondary education subsidy as outlined above.

RESPECTFULLY SUBMITTED,

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ATTORNEY FOR APPELLANT

Attachment: Court of Appeals Ruling

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellant's Brief and Argument was the sum of \$ 3⁴⁰.

E. C.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This Application complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) and 6.1103(4) because:

☒ this Application contains 2,150 words, excluding the parts of the Application exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Application complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

☒ this Application has been prepared in a proportionally spaced typeface using Microsoft Word in fourteen (14) point Times New Roman.

E. C.

Signature

7/25/17

Date

IN THE COURT OF APPEALS OF IOWA

No. 16-1794
Filed July 6, 2017

IN RE THE MARRIAGE OF LYNN MARIE LARSEN
AND ROGER WAYNE LARSEN

Upon the Petition of
LYNN MARIE LARSEN,
Petitioner-Appellee,

And Concerning
ROGER WAYNE LARSEN,
Respondent-Appellant.

Appeal from the Iowa District Court for Story County, Michael J. Moon,
Judge.

Roger Wayne Larsen appeals the district court's order requiring him to pay
a postsecondary education subsidy. **AFFIRMED.**

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant.

Nicole S. Facio of Newbrough Law Firm, L.L.P., Ames, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, Judge.

On H.M.L.'s first day of class at Iowa State University, her divorced parents returned to court to litigate their required contributions toward her postsecondary education expenses under Iowa Code section 598.21F (2016). The district court ordered each parent to pay \$6629.73 toward their daughter's education costs. Roger Larsen appeals that order, arguing the district court erred in calculating her total college expenses and did not require an adequate contribution from H.M.L. Because we find good cause existed for the subsidy ordered, we affirm.

I. Facts and Prior Proceedings

Roger Larsen and Lynn Jones were married in 1995 and divorced in 2015. Lynn currently works in the residence department at Iowa State, earning approximately \$77,000 annually. Roger works for the Iowa Department of Transportation and also earns income from the military reserves, for a total of \$110,000 annually. They have three children, but only the college subsidy for their daughter H.M.L. is at issue in this case.

In entering the dissolution decree in August 2015, the district court adopted the parties' partial stipulation, including a postsecondary education subsidy provision.¹ In regard to the postsecondary education subsidies for their three children, Roger and Lynn stipulated:

Postsecondary education subsidy. In the event any child pursues a course of study or training beyond high school education

¹ Roger appealed the allocation of income tax exemptions, equalization payment, distribution of marital property, and support provisions of the decree. See *In re Marriage of Larsen*, No. 16-1794, 2016 WL 5408073 (Iowa Ct. App. Sept. 28, 2016). Postsecondary education subsidies were not at issue in the previous appeal. *Id.*

under the circumstances contemplated by Iowa Code section 598.21F, each of the parties shall contribute toward the costs of that study or training as provided for by section 598.21F(c). The parties' custodial 529 accounts² for each child shall first be used to discharge their share of their contributions under this provision but neither party shall be able to avoid contribution based upon any claims of alienation or estrangement. These accounts shall be equally divided with each party having an account for each child. The value[] on [this] account[] as of March 31, 2015 was as follows: . . . H.M.L. (\$ 63,107.24). . . . The parties shall be free to continue to add funds to these accounts but are not required to do so, however the balances on each of these accounts should not be reduced below half of the amounts above unless due to market conditions. The parties acknowledge that these accounts are for the children and will not be used for another purpose or withheld from any of the children.

One year later, Lynn filed an application for a hearing to determine the postsecondary education subsidy for H.M.L.'s college costs. Lynn filed the application because H.M.L. accepted admission to Iowa State University and began classes on August 22, 2016. The court held a hearing on H.M.L.'s postsecondary education subsidy, also on August 22, 2016. Both parties submitted evidence related to the total costs of H.M.L.'s attendance at Iowa State.

² A 529 account is a tax-free college savings account used to pay for higher education expenses. See 26 U.S.C. § 529.

Roger urged the district court to calculate the total cost of attendance as follows:

Tuition	\$7098.00
Room	\$4487.00
Board	\$3831.00
Fees	\$1278.40
Books	\$ 588.80
Sorority dues	\$0
Cash allowance	\$0
Total	\$16,694.40 ³

Using his \$16,694.40 figure as the total cost of attendance, Roger claimed his postsecondary education subsidy should total \$0 for H.M.L.'s education. According to Roger, the district court should have subtracted \$6025.00 in scholarships; \$5500 in loans; \$2869.11 in H.M.L.'s existing financial resources;⁴ and \$6000 representing H.M.L.'s potential income. According to Roger, adding in the potential income would result in a surplus of \$3699.71 for H.M.L., and therefore, neither he nor Lynn need to pay a postsecondary education subsidy.

³Although Roger's trial exhibit portrayed the total as \$16,694.40, his cost estimates actually add up to \$17,283.20, a difference of \$588.80. Thus, while Roger purports to include expenses for books, he did not account for books in his total.

⁴ Roger paid \$750 in child support to Lynn for the summer of 2016. He claims that because that amount would not have been paid if H.M.L. did not go to college, it should be added to the \$2119.11 in H.M.L.'s checking account as a financial resource.

The district court, in its October 5, 2016 amended order, calculated the total cost of attendance as follows:

Tuition	\$7098.00
Room	\$4487.00
Board	\$3830.00
Fees	\$1365.40
Books	\$ 588.80
Sorority Dues	\$1920.00 ⁵
Cash Allowance	\$ 600.00
Total	\$19,889.20

The district court determined tuition and room and board costs based on the Iowa State U-bill. The court included sorority costs for the entire 2016-17 school year. It then took the amount spent on books for the first semester, \$294.40, and doubled it to reach the total book cost for the entire year.

After settling on \$19,889.20 as the actual cost of attendance, the district court subtracted H.M.L.'s \$5520 in scholarships, leaving a balance of \$14,369.20. The district court divided this number in half, but because that amount—\$7184.60—was higher than the allowed one-third of the total cost, the court ordered Roger to pay \$6629.73, which is one-third of the \$19,889.20 total cost of attendance determined above. The district court did not deduct the balance of

⁵ The court reached this number by totaling new member fees from fall 2016 and adding ongoing sorority membership dues.

H.M.L.'s checking account, the available (but declined) student loan, or her potential income from employment.

Roger appeals the district court's amended order determining the postsecondary education subsidy for H.M.L. Specifically, Roger claims the district court incorrectly calculated H.M.L.'s actual cost to attend Iowa State, incorrectly included sorority dues and a cash allowance in the cost of attendance, and failed to subtract H.M.L.'s offered student loan, scholarships, checking balance, and potential earnings from the cost of attendance.

II. Scope and Standard of Review

We review this equitable action de novo. *In re Marriage of Vaughan*, 812 N.W.2d 688, 692 (Iowa 2012).

III. Analysis

A. Postsecondary Education Subsidy

A court may order parties to a dissolution of marriage to pay a postsecondary education subsidy for their child's college expenses if good cause is shown. Iowa Code § 598.21F(1). "In determining whether good cause exists, the court must consider the age and ability of the child, the child's financial resources, whether the child is self-sustaining, and the financial situation of the parents." *In re Marriage of Goodman*, 690 N.W.2d 279, 282-283 (Iowa 2004); see also Iowa Code § 598.21(F)(2). If good cause is shown, the court determines the amount of the subsidy based upon the reasonable costs for necessary postsecondary education expenses, subtracting what the child may reasonably be expected to contribute, and then apportioning the remaining costs between the parents in an amount not to exceed thirty-three and one-third

percent of the total cost of postsecondary education. See Iowa Code § 598.21F(2)(a-c). Roger's appeal concerns the amount he was ordered to pay.

1. Calculating Overall Cost of Attendance

We first address the cost of attendance. "The actual and necessary costs of attending college exceed tuition, books, supplies, and a room and board plan. . . . [A] college education includes social, cultural, and education experiences outside the class room that impose additional expenses for students." *In re Marriage of Vannausdle*, 668 N.W.2d 885, 889 (Iowa 2003).

Roger contends the actual cost of H.M.L.'s attendance at Iowa State should be calculated as \$16,694.40. But a complete review of the record shows his number is incorrect. The district court amended its original order to include \$588.80 in book costs at Roger's request. But Roger's *total* calculation does not include the costs of books for either semester. The district court's inclusion of \$588.80 for books in the cost of attendance was proper.

Roger next argues the district court should not have included the \$87 in total fees for two fall 2016 specific classes because they are one-time fees. The district noted that although these specific classes do indeed involve one-time fees, the nature of H.M.L.'s major will result in other courses with one-time fees. The court therefore included the \$87 fees for the spring semester to account for these future classes. We agree with the district court's fee determination.

2. Including Sorority Dues and Cash Allowance

Roger reserves his harshest criticism for the district court's inclusion of sorority dues and a \$600 cash allowance in the total cost of his daughter's attendance at Iowa State. When deciding to incorporate the price of H.M.L.

joining a sorority in her overall college expenses, the district court relied on *Goodman* for the proposition that “a college education is not limited to what is learned in the classroom; it includes social, cultural, and educational experiences outside the classroom.” 690 N.W.2d at 284; accord *Vannausdle*, 668 N.W.2d at 889.

Roger argues the facts in *Goodman* are distinct from the circumstances in this case. In *Goodman*, the parents agreed to pay for sorority dues for their daughter because they believed “sorority life” was a necessary part of her college experience. 690 N.W.2d at 284. Because he and Lynn have not reached any kind of agreement regarding the essential aspects of A.M.L.’s social life at college, Roger contends neither sorority dues nor the extra allowance are legitimate college costs.

We decline to give *Goodman* such a narrow reading. The lesson to be gleaned from *Goodman* and *Vannausdle* is that reasonable expenses associated with the social side of college may be included in the total costs of attendance. For H.M.L., those extracurricular expenses cover joining a sorority; for other students, the expenses may be the costs associated with a science club or intramural sports. While sorority dues may not always be a reasonable and necessary cost of attending college, like the district court, we find they are in this case. See *id.* (finding parents had means to cover expenses for daughter’s experiences outside the classroom).

Roger’s claim about the district court’s inclusion of a \$600 cash allowance fails on similar grounds. Both parties have the financial means to support their

child's allowance. The district court properly included H.M.L.'s sorority dues and the cash allowance in the costs of attendance.

3. Determining Child's Reasonable Contribution

After fixing the cost of attendance, the court next determines the amount the child "may *reasonably* be expected to contribute." Iowa Code § 598.21F(2)(b) (emphasis added); *Vannausdle*, 668 N.W.2d. at 888. Upon review of the record, the district court used the correct scholarship amount in its calculations. Specifically, H.M.L. was required to estimate the total of one of her scholarships. She reported her "Dollars for Scholars" scholarship to Iowa State, and the university then applied \$263 to H.M.L.'s fall term U-Bill when it received the actual money. A similar "Dollars for Scholars" credit of \$263 should appear on H.M.L.'s spring 2017 U-Bill. Roger's assertion there is an additional scholarship worth \$500 is not supported by the record. We therefore decline to modify the postsecondary education subsidy as it relates to fees, books, or scholarships.

H.M.L. was offered \$5500 in unsubsidized loans from the federal government but declined them. H.M.L. also had some cash on hand in her checking account. Roger argues these resources must be subtracted under section 598.21F(2). We disagree.

Our supreme court has held that while student loans *may* be considered as part of a student's contribution, doing so is not mandatory in every case. See *Vannausdle*, 668 N.W.2d 889-90 (holding student loans are not included where it is contrary to the wishes of the parties) (emphasis added); *see also Vaughan*, 812 N.W.2d at 695 (holding student loans would not be considered where a party

fails to raise their inclusion). Roger raised the student-loans issue here, and the parties disagree about their inclusion in H.M.L.'s contribution. Roger testified, although he agreed the purpose of the 529 account for H.M.L. was to ease her financial burden when attending college, he still wished for her to "contribute and have some proverbial skin in the game." Lynn testified both that H.M.L. consulted her about taking the student loan she was offered and that H.M.L. ultimately declined the loan because it was not needed. Both parties agree the purpose of H.M.L.'s 529 account was to assist with her college education expenses.

We begin by noting H.M.L. indeed has "skin in the game." The district court order mandates Roger and Lynn to pay one-third of her postsecondary education expenses. The remaining responsibility falls to H.M.L. It is true most of H.M.L.'s contribution is covered by scholarships, but those funds do not cover all of her expenses. H.M.L. will be personally responsible for some of her college costs.

Vannausdile and *Vaughan* recognize certain facts warrant not counting loans towards the student contribution. The facts here fall into that category. The parents have saved more than \$63,000 to ease H.M.L.'s financial burden in attending college. They stipulated this money would not be used for any other purpose, nor withheld from the child. The parents also stipulated the respective 529 accounts would be applied only for educational purposes for each child. H.M.L. will not be self-sustaining while attending Iowa State. Given the nature of attending college, H.M.L. will incur expenses that require her to use her own financial resources. Further, both parents testified the purpose of their

aggressive college saving was to benefit their children and ease their financial burden when attending college. Under these facts, it would be inequitable to count *offered but unaccepted* loans toward the student's contribution.

Roger asserts H.M.L. can work ten hours a week during the academic year and forty hours a week during the summers at ten dollars per hour to pay for her education expenses. There is no indication in the record that such jobs were available. At most, the record shows H.M.L. had been offered a position for five hours per week for seven dollars and twenty-five cents per hour. The district court noted these earnings "will be minimal." And H.M.L. will still have to cover one-third of her expenses related to college. Roger's assertion of H.M.L.'s earning potential "is too speculative to impute" towards her contribution. See, e.g., *In re Marriage of McDermott*, No. 04-1033, 2005 WL 2216982, at *3 (Iowa Ct. App. Sept. 14, 2005). Because Roger's figure for H.M.L.'s earning potential is too speculative, we reject its application to the postsecondary education subsidy.

Finally, we decline to subtract the \$750 in child support Roger paid to Lynn for support of H.M.L. while H.M.L. was living at Lynn's home before H.M.L. attended Iowa State. This money was to accommodate *Lynn* for expenses associated with H.M.L. living at Lynn's home. It cannot now be used to pay for postsecondary subsidy expenses.

B. Appellate Attorney Fees

Lynn requests \$2500 in appellate attorney fees. She argues Roger should pay her attorney fees because she had to bring the action even though the parties have substantial funds available in the 529 plans to pay the

postsecondary education subsidy ordered by the court without any additional financial hardship. We decline to order Roger to pay Lynn's appellate attorney fees. See *Vaughan*, 812 N.W.2d at 696. Costs are assessed to Roger.

IV. Conclusion

For the foregoing reasons, we decline to modify the district court's determination of postsecondary education subsidies. We also decline to award appellate attorney fees.

AFFIRMED.



State of Iowa Courts

Case Number
16-1794

Case Title
In re Marriage of Larsen

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